Comment on Recent Cases

COMMERCE BETWEEN PORTS OF THE SAME STATE—INTERSTATE OR FOREIGN.—It seems remarkable that a decision founded on so plain an error as that of the Pacific Coast Steamship Company v. Railroad Commissioners[1] has stood so long upon the books unchallenged by direct decision. That transportation between two points of the same State is "commerce with foreign nations" merely because the vessel in transit passes over the high seas is a proposition which finds support neither in logic nor in the purpose which the Commerce Clause of the Federal Constitution was designed to serve. It is to be hoped that the decision of the Supreme Court of California[2] holding that the State Railroad Commission has jurisdiction over the rates charged by a carrier between two points in this State, even though the vessel in transit traverses the high seas will be affirmed by the Supreme Court of the United States, and the decision of the Pacific Coast Steamship case finally repudiated.

The decision in the latter case by the United States Circuit Court that the commerce in question was commerce with foreign nation and that as a consequence the State had no jurisdiction over the rates charged was based entirely upon the fallacious reasoning contained in the prior case of Lord v. Steamship Company,[3] where the validity of an act of Congress[4] limiting the liability of owners of vessels for losses was sustained as to a vessel plying between two ports in California. The Court in that case referred the power of Congress to enact the statute to the Commerce Clause of the Constitution, and flatly stated that the Admiralty power was not involved,[5] reasoning that the vessel while on the high seas "was navigating among the vessels of other nations and was treated by them as belonging to the country whose flag she carried," and though not trading with them, yet "she was navigating with them, and consequently with them she was engaged in commerce."

In the Lord case the question of jurisdiction over rates was not before the Court, but only the power of Congress to enact the limited liability statute. That this power is derived, not from the Commerce Clause, but from the Admiralty and Marine Jurisdiction was subsequently pointed out by the United States Supreme Court in commenting upon the Lord case.[6] That the

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[1] (1883) 18 Fed 10.

[2] Wilmington Transportation Co. v. R. R. Commission, (Jan. 29, 1913) 47 Cal. Dec. 46.

[3] (1880) 102 U. S. 541.

[4] U. S. Rev, Sts. sec. 4283.

[5] 102 U. S. 541, 545.

[6] Lehigh Valley Ry. Co. v. Pennsylvania, (1892) 145 U. S. 192, 203.

Admiralty jurisdiction of the Federal Government is distinct from, and does not depend upon the power to regulate commerce, was recognized both before[7] and subsequent[8] to the Lord case. In fact the Admiralty jurisdiction is much broader in its scope than that under the Commerce Clause,[9] extending to all of the public waters of the United States forming by themselves, or united with other waters, a continued highway over which commerce may be carried on with other States or foreign countries;[10] the Erie Canal, though lying entirely within the borders of the State of New York, is as much within the Admiralty jurisdiction as the high seas;[11] local traffic upon the canal moves among the vessels of foreign nations, and if that fact is determinative of the character of the commerce involved, it must follow that all internal transportation to which the Admiralty power extends is beyond the rate regulating power of the State within whose borders alone the transportation is confined. The extent of the Admiralty power, it is believed, is a matter entirely distinct from the question of jurisdiction over rates.

S. R. S.

CONSTITUTIONAL LAW: STATE LICENSE TAX ON ITINERANT VENDORS.—The practice of fortifying every proposition advanced in an opinion with a formidable array of citations of authority has perhaps been carried far beyond the exigencies of most cases by the courts in recent years. It is therefore a matter of surprise to find the Supreme Court of Wyoming applying Article 1, Section 10 of the Federal Constitution without referring to a single prior adjudication.[1] The Court had before it the "Itinerant Vendors Act,"[2] which required that itinerant vendors should obtain licenses as a condition to making sales in Wyoming. The defendant was engaged in making contracts for the sale of buggies, which by the terms of such contracts were to be forwarded from Iowa by defendant's principal to the vendees in Wyoming. Defendant was arrested for a violation of the act, in not procuring a license. The Court held that the act was unconstitutional on two grounds: (1) as repugnant to the Commerce Clause, and (2) as a violation of Article 1, Section 10, which prohibits the States from laying any imposts or duties upon exports or imports.

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[7] The Belfast, (1868) 74 U. S 624; Genesee Chief, (1851) 12 How. 443; Propeller Commerce, (1861) 66 U. S. 574.

[8] Butler v. Steamship Co., (1889) 130 U. S. 527; In Re Garnet, 141 U. S. 1; The Robert W. Parsons, (1903) 141 U. S. 17, 35.

[9] Ex Parte Boyer, (1884) 109 U. S 629; The Robert W. Parsons, (1903) 191 U. S. 17; In Re Garnet, (1891) 141 U. S. 1; Escanaba Co. v. Chicago, (1882) 107 U. S. 678.

[10] The Daniel Ball, (1870) 10 Wall. 557.

[11] The Robert W. Parsons, (1903) 191 U. S. 17.

[1] State v. Byles, (Nov. 10, 1913) 136 Pac. 114.

[2] Wyo. Comp. Stat. sec. 2844-2850.